IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

CRL.A.No. 520 of 1999

CMP.2284/1998 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II,PERINTHALMANNA

.....

APPELLANT/COMPLAINANT:

T.R. JAIN, 52/7, GENERAL MUTHIA STREET, SOWCARPET, CHENNAI - 79, REPRESENTED BY POWER OF ATTORNEY HOLDER P. RAJ BABU, PAYYANTHARAYATTIL HOUSE, PULPETTA P.O., MALAPPURAM DISTRICT

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS/ACCUSED:

P. MOHAMMED, PATTANATH HOUSE, PANDIKKAD P.O., MALAPPURAM DISTRICT

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 31/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.A. No. 520 of 1999

Dated this the 31st day of January, 2007

Judgment

This appeal is filed by the complainant against acquittal of the accused for absence of the complainant on the date of posting of the case. It is not stated that for what purpose the case was posted on 27.2.1999. According to the complainant, he was present on various occasions. He was absent on 27.2.1999 due to illness and his counsel applied for exemption. That was rejected and accused was acquitted. Even though accused can be acquitted under section 256 (1) of the Code of Criminal Procedure for absence of the complainant, it cannot be done mechanically. In this case, it is not stated whether presence of the complainant was mandatory on that day. Complainant has applied for exemption also. On the facts of the case, I am of the view that one more opportunity should be given to the complainant. In the above circumstances, the impugned order is set aside and the Magistrate's Court is directed to proceed with the case. Complainant is directed to be present before the court below on 26.3.2007.

2. Even though notice to the respondent issued by this court was accepted, there is no appearance. He did not appear before the Magistrate's Court also. Trial court

should take further steps for service of summons to the accused.

Appeal is allowed by way of remand.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl.A.No.520 of 1999

Judgment

31-1-2007